

Assembly Bill No. 859

Passed the Assembly June 14, 2007

Chief Clerk of the Assembly

Passed the Senate May 31, 2007

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 488.080, 512.030, and 699.080 of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 859, Plescia. Civil procedure: service of process.

(1) Existing law requires certain documents to be filed with a levying officer under a writ of attachment or execution within 5 days of the levy, including an affidavit of the registered process server stating the manner of levy performed and proof of service of the copy of the writ and notice of attachment or levy on other persons.

This bill instead would require that filing within 5 court days of the levy, and would instead allow for the filing of the above-described statement by service of process.

(2) Existing law requires that prior to a hearing on a writ of possession, the defendant be served with a copy of the summons and complaint, a notice of application and hearing, and a copy of the application and any affidavit in support thereof.

This bill would require service in the same manner as a summons, as specified, if the defendant has not appeared in the action and further writs, notices, orders, or other papers are required to be served on the defendant.

The people of the State of California do enact as follows:

SECTION 1. Section 488.080 of the Code of Civil Procedure is amended to read:

488.080. (a) A registered process server may levy under a writ of attachment on the following types of property:

(1) Real property, pursuant to Section 488.315.

(2) Growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, pursuant to Section 488.325.

(3) Personal property in the custody of a levying officer, pursuant to Section 488.355.

(4) Equipment of a going business, pursuant to Section 488.375.

(5) Motor vehicles, vessels, mobilehomes, or commercial coaches used as equipment of a going business, pursuant to Section 488.385.

(6) Farm products or inventory of a going business, pursuant to Section 488.405.

(7) Personal property used as a dwelling, pursuant to subdivision (a) of Section 700.080.

(8) Deposit accounts, pursuant to Section 488.455.

(9) Property in a safe-deposit box, pursuant to Section 488.460.

(10) Accounts receivable or general intangibles, pursuant to Section 488.470.

(11) Final money judgments, pursuant to Section 488.480.

(12) Interest of a defendant in personal property in the estate of a decedent, pursuant to Section 488.485.

(b) Before levying under the writ of attachment, the registered process server shall deposit a copy of the writ with the levying officer and pay the fee provided by Section 26721 of the Government Code.

(c) If a registered process server levies on property pursuant to subdivision (a), the registered process server shall do both of the following:

(1) Comply with the applicable levy, posting, and service provisions of Article 2 (commencing with Section 488.300).

(2) Request any third person served to give a garnishee's memorandum to the levying officer in compliance with Section 488.610 on a form provided by the registered process server.

(d) Within five court days after levy under this section, all of the following shall be filed with the levying officer:

(1) The writ of attachment.

(2) A proof of service by the registered process server stating the manner of levy performed.

(3) Proof of service of the copy of the writ and notice of attachment on other persons, as required by Article 2 (commencing with Section 488.300).

(4) Instructions in writing, as required by the provisions of Section 488.030.

(e) If the fee provided by Section 26721 of the Government Code has been paid, the levying officer shall perform all other duties under the writ as if the levying officer had levied under the

writ and shall return the writ to the court. If the registered process server does not comply with subdivisions (b) and (d), the levy is ineffective and the levying officer is not required to perform any duties under the writ and may issue a release for any property sought to be attached. The levying officer is not liable for actions taken in conformance with the provisions of this title in reliance on information provided to the levying officer under subdivision (d), except to the extent that the levying officer has actual knowledge that the information is incorrect. Nothing in this subdivision limits any liability the plaintiff or registered process server may have if the levying officer acts on the basis of incorrect information provided under subdivision (d).

(f) The fee for services of a registered process server under this section shall be allowed as a recoverable cost pursuant to Section 1033.5.

SEC. 2. Section 512.030 of the Code of Civil Procedure is amended to read:

512.030. (a) Prior to the hearing required by subdivision (a) of Section 512.020, the defendant shall be served with all of the following:

- (1) A copy of the summons and complaint.
- (2) A Notice of Application and Hearing.
- (3) A copy of the application and any affidavit in support thereof.

(b) If the defendant has not appeared in the action, and a writ, notice, order, or other paper is required to be personally served on the defendant under this title, service shall be made in the same manner as a summons is served under Chapter 4 (commencing with Section 413.10) of Title 5.

SEC. 3. Section 699.080 of the Code of Civil Procedure is amended to read:

699.080. (a) A registered process server may levy under a writ of execution on the following types of property:

- (1) Real property, pursuant to Section 700.015.
- (2) Growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, pursuant to Section 700.020.
- (3) Personal property in the custody of a levying officer, pursuant to Section 700.050.

(4) Personal property used as a dwelling, pursuant to subdivision (a) of Section 700.080.

(5) Deposit accounts, pursuant to Section 700.140.

(6) Property in a safe-deposit box, pursuant to Section 700.150.

(7) Accounts receivable or general intangibles, pursuant to Section 700.170.

(8) Final money judgments, pursuant to Section 700.190.

(9) Interest of a judgment debtor in personal property in the estate of a decedent, pursuant to Section 700.200.

(b) Before levying under the writ of execution, the registered process server shall deposit a copy of the writ with the levying officer and pay the fee provided by Section 26721 of the Government Code.

(c) If a registered process server levies on property pursuant to subdivision (a), the registered process server shall do both of the following:

(1) Comply with the applicable levy, posting, and service provisions of Article 4 (commencing with Section 700.010).

(2) Request any third person served to give a garnishee's memorandum to the levying officer in compliance with Section 701.030 on a form provided by the registered process server.

(d) Within five court days after levy under this section, all of the following shall be filed with the levying officer:

(1) The writ of execution.

(2) A proof of service by the registered process server stating the manner of levy performed.

(3) Proof of service of the copy of the writ and notice of levy on other persons, as required by Article 4 (commencing with Section 700.010).

(4) Instructions in writing, as required by the provisions of Section 687.010.

(e) If the fee provided by Section 26721 of the Government Code has been paid, the levying officer shall perform all other duties under the writ as if the levying officer had levied under the writ and shall return the writ to the court. If the registered process server does not comply with subdivisions (b) and (d), the levy is ineffective and the levying officer is not required to perform any duties under the writ and may issue a release for any property sought to be levied upon.

(f) The fee for services of a registered process server under this section shall be allowed as a recoverable cost pursuant to Section 1033.5.

(g) A registered process server may levy more than once under the same writ of execution, provided that the writ is still valid.

Approved _____, 2007

Governor